

**BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

**In the Matter of the Petition for  
Early Termination of Probation  
by:**

**Lindsay Rose Agolia, M.D.**

**Case No. 800-2017-037708**

**Physician's and Surgeon's  
Certificate No. A 113193**

**Petitioner**

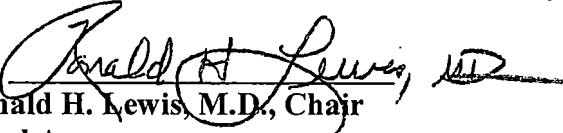
**DECISION**

**The attached Proposed Decision is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.**

**This Decision shall become effective at 5:00 p.m. on July 11, 2019.**

**IT IS SO ORDERED June 11, 2019.**

**MEDICAL BOARD OF CALIFORNIA**

By:   
Ronald H. Lewis, M.D., Chair  
Panel A

BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Petition for Early  
Termination of Probation by:

LINDSAY ROSE AGOLIA, M.D.,

Physician's and Surgeon's Certificate  
Number A 113193

Petitioner.

Case No. 800-2017-037708

OAH No. 2019010412

**PROPOSED DECISION**

Administrative Law Judge Tiffany L. King, Office of Administrative Hearings, State of California, heard this matter in Sacramento, California, on April 3, 2019.

Ryan Yates, Deputy Attorney General, represented the Office of the Attorney General, and appeared pursuant to Government Code section 11522.

Matthew A. Brinegar, Attorney at Law, represented Lindsay Agolia, M.D. (petitioner), who was present.

Written and oral evidence was received. The record was held open to allow petitioner to submit the Board's dismissal of a subsequent consumer complaint. On April 4, 2019, petitioner submitted said document. Mr. Yates was afforded an opportunity but submitted no objection. The document was marked and admitted as Exhibit D. The record was closed and the matter was submitted for decision on April 11, 2019.

**FACTUAL FINDINGS**

1. On July 9, 2010, the Medical Board of California (Board) issued Physician's and Surgeon's Certificate No. A 113193 to petitioner. Her certificate is current and will expire on July 31, 2020, unless renewed.

2. On March 6, 2015, an Accusation was filed against petitioner<sup>1</sup> alleging that petitioner engaged in unprofessional conduct when she prescribed controlled substances to a patient without an appropriate examination or indication, failed to maintain accurate and adequate records, and engaged in a social and/or sexual relationship with two of her patients. The Accusation further alleged that petitioner's ability to practice medicine safely was impaired due to a mental or physical illness, specifically, cannabis use disorder or depression.

3. Petitioner entered into a Stipulated Settlement and Disciplinary Order (Stipulation), which was adopted by the Board and effective May 29, 2015. In the Stipulation, petitioner agreed that the Board could establish a prima facie case with respect to the charges and allegations in the Accusation and that her certificate was subject to discipline. Petitioner was placed on probation for five years. Terms and conditions of her probation include: abstention from controlled substances, marijuana, and alcohol; random biological fluid testing; psychotherapy; completion of courses in professionalism, professional boundaries, and prescribing practices; and retention of a practice monitor. Additionally, petitioner is prohibited from recommending or approving a patient for medical marijuana, operating a solo practice, and supervising physician assistants.

4. On July 19, 2017, petitioner filed a Petition for Termination of Probation. She seeks early termination so that she may resume practicing in a non-profit clinic where supervision of physician assistants is required. Petitioner further cited the cost of practice monitoring and biological fluid testing as a financial hardship. Finally, petitioner desires to move to the State of Washington before her daughter begins kindergarten.

### *Background*

5. Petitioner graduated from Seattle University with a bachelor's degree in general science in 2004. She earned her medical doctorate from the University of Washington School of Medicine in 2008. She then completed a one-year residency at North Memorial Family Medicine Residency Program in Minnesota, followed by a two-year residency at Santa Rosa Family Medicine Residency Program in California. In 2012, she became board-certified in family medicine. Petitioner is bilingual in English and Spanish.

6. Following her residency, petitioner practiced as a family physician at La Clinica de la Raza (La Clinica), in Concord, California in September 2011. La Clinica is a federally qualified health center (FQHC) which provides comprehensive medical care to a primarily Spanish-speaking population. Petitioner resigned from La Clinica in February 2013. Over the next five months, she served as a volunteer physician for Translators without Borders, where she translated medical terminology for humanitarian work abroad. From September 2013 to April 2017, petitioner practiced as a part-time family physician with Piedmont Primary Care, a small private practice in Oakland. Since September 2016, she has

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<sup>1</sup> The Accusation, filed prior to petitioner's marriage, identified her by her maiden name, Lindsay Rose Zeichner.

practiced as a full-time family physician with Afato Medical Corporation in Yuba City, providing primary care, women's health, and urgent care services.

#### *Conduct Underlying Probationary License*

7. In March 2012, petitioner treated Patient T.S. for a laceration near his left eyebrow. Petitioner scheduled a follow-up visit for suture removal. She also prescribed Patient T.S. 20 tablets of Norco, but failed to document it in the patient's medical record. She also failed to document any examination or evaluation to support the prescription. At Patient T.S.'s second visit, petitioner removed the sutures and documented a history of shoulder injury and instability but did not document a shoulder exam. Petitioner then prescribed 45 tablets of Norco for Patient T.S.'s "upcoming travels." Thereafter, petitioner entered into a brief social relationship with Patient T.S. Between March 28 and April 8, 2012, petitioner issued six Norco prescriptions to Patient T.S. without documenting a medical indication or appropriate examination.

8. In November 2012, petitioner saw Patient J.M. on two occasions. Petitioner noted in the medical record that Patient J.M. was separated from his wife, had three children, and that there were "problems." Petitioner referred Patient J.M. to a psychologist for consultation, noting in the medical record that the patient wanted help "sorting out" his feelings regarding his wife and whether they should reconcile. Shortly after the second visit, petitioner entered into a romantic relationship with Patient J.M. which lasted for several months.

#### *Probation Compliance*

9. Petitioner has complied with all terms of her probation. In a probation report dated March 22, 2018, Paulette Romero, Staff Services Manager II, confirmed that petitioner was in compliance with the terms and conditions of probation and current on her probation costs.

#### *Petitioner's Evidence*

10. From a young age, petitioner knew she wanted a career in healthcare and to follow in the footsteps of her father, a podiatrist. While in high school, she volunteered for Marin AIDS Project, serving as a food delivery program coordinator and a peer educator regarding reproductive health. Throughout college, she volunteered at various health service organizations including, a community health center, a family physician's office serving a primarily Spanish-speaking population, and a homeless youth center.

11. Although petitioner performed well academically in high school, she was diagnosed with major depression at age 14. She began therapy and was prescribed antidepressant medications. Petitioner also began smoking marijuana. At first, she only smoked socially, as it was common among her peers. Toward the end of high school, however, she was smoking marijuana more often and by herself. Petitioner explained that

she went through a “terrible breakup,” was lonely, and turned to marijuana to deal with her depression symptoms.

12. Petitioner’s issues with depression persisted throughout college and medical school. She continued to attend psychotherapy and self-medicate with marijuana. She realized her marijuana use had become a problem and sought treatment. However, she was turned away from drug rehabilitation programs because her addiction was to marijuana, which the programs were not designed to treat. While a medical resident in Minnesota, petitioner was evaluated by Hazelden, an addiction treatment center;<sup>2</sup> but, she was not accepted by its outpatient program, again because her addiction was to marijuana which the center found to be “not a serious enough problem.”

#### EMPLOYMENT AT LA CLINICA

13. Petitioner’s first post-residency position at La Clinica was her “dream job.” In this position, she provided comprehensive family medical care, as well as prenatal and gynecological services to a primarily underserved or uninsured patient population. Additionally, it allowed her to hone her Spanish language skills, as 80 to 90 percent of the clinic’s patients were Spanish-speaking. Petitioner described La Clinica as “the place where I wanted to be” – she was close to her family, earned a good salary, and enjoyed working with her colleagues.

#### Patient T.S.

14. Petitioner first met patient T.S. in March 2012, when he presented at the clinic with a laceration to his left eyebrow. T.S. had no medical insurance and complained of being in “a lot of pain.” Petitioner’s initial perception of T.S. was that he was “extremely vulnerable” and had a general fear of the medical community. He told petitioner that she was the first doctor whom he trusted. Petitioner “felt sorry” for T.S. and prescribed him 20 Norco tablets without proper documentation. In hindsight, petitioner believes T.S. “targeted” her based on her naivety. At that time, petitioner had little experience in prescribing opioid medication, and was unfamiliar with the Board’s guidelines for prescribing controlled substances. She also did not know that T.S. had a history of drug abuse and was an admitted “doctor shopper.”

15. Petitioner next saw T.S. on his follow-up visit to have his sutures removed. T.S. asked petitioner out on a date and she gave him her personal telephone number. A short while later, they went on one coffee date after which petitioner was not interested in seeing him again. Despite this, T.S. continued to send petitioner text messages and “frequently” stopped by the clinic unannounced in an attempt to continue their relationship.

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<sup>2</sup> Hazelden has since merged with the Betty Ford Foundation and operates addiction treatment centers for drug and alcohol rehabilitation.

16. At times, T.S. told petitioner that he had lost his prescription and needed a new one. Petitioner "felt sorry" for T.S. and would issue him another Norco prescription without seeing him. Petitioner knew that it was inappropriate to issue these prescriptions without examining T.S. first. However, at the time, she believed she was doing the right thing and helping T.S. to ease his pain. She did not document her actions because she did not want her name on his medical records after they had gone on a date.

17. At hearing, petitioner admitted that she knew it was inappropriate to enter into a social relationship with a patient. However, at the time, she did not believe her relationship with T.S. was inappropriate. Rather, they were two consenting adults. Further, petitioner was single, working full-time, and work was the only place she met new people. In hindsight, she is horrified by her decisions and regrets "everything about the situation" with T.S. She believes T.S. took advantage of her inexperience and naivety and used her to gain access to drugs. She now realizes that she allowed her personal feelings "cloud" her medical judgment and "blinded" her to the realities of T.S.'s medical needs.

18. Today, petitioner has learned to separate her personal feelings from her medical decision-making. While she often feels sorry for her patients, she has much stricter standards for issuing prescriptions. She does not prescribe or refill any pain medications for patients through urgent care, or otherwise on their first visit. When she does prescribe pain medications, she runs a patient activity report and documents everything.

#### Patient J.M.

19. In November 2012, petitioner saw patient J.M. for two visits before referring him to a psychologist to deal with his recent divorce. Shortly after the second visit, and after the referral, petitioner entered into a romantic relationship with J.M. which lasted several months. Petitioner did not provide direct medical care to J.M. after the start of their relationship. Although J.M. understood this, petitioner did not document it in his medical record.

20. Petitioner acknowledges her relationship with J.M. was inappropriate. Although she did not hide the relationship, she did not take into consideration the power differential between a patient and doctor. Petitioner is now happily married and recognizes the dangers inherent with having personal relationships with current or former patients.

21. Around February or March 2013, petitioner was summoned to a meeting with her supervisor and the medical director for La Clinica. The supervisor and medical director were already aware of petitioner's prior relationship with T.S. based on petitioner's self-disclosure. At this meeting, though, they asked petitioner if she was dating a former patient (J.M.), and whether she understood the seriousness of the situation. Petitioner felt "panicked" and went out on medical stress leave. After her leave ended, petitioner resigned from her position before any administrative discipline was rendered.

22. At hearing, petitioner explained that her above actions resulted from her underlying and untreated depression. She described that she had a “void to fill” and “acted out” with these behaviors in an effort to seek attention and validation.

#### REHABILITATION

23. Following her resignation, petitioner reached her “emotional rock bottom.” She knew it was time to deal with her marijuana addiction and underlying issues. In May 2013, petitioner voluntarily checked into a 60-day inpatient rehabilitation program at Hazelden specifically designed for doctors with addiction. While enrolled, petitioner attended group therapy with other addicted health professionals twice weekly. She also worked through Hazelden’s 12-step program, which was similar to the program promoted by Alcoholics Anonymous (AA). Petitioner described the program as an “eye-opening experience.” She learned that her triggers for engaging in past inappropriate behavior included isolation, loneliness, feelings of inadequacy, and lack of structure.

24. Petitioner completed the rehabilitation program and returned home on July 4, 2013. She joined AA and attended meetings on a daily basis. She selected AA because she believed it was a stronger program than Narcotics Anonymous or Marijuana Anonymous. With her sponsor, petitioner continued to work the 12-steps over the summer.

25. In September 2013, petitioner accepted a part-time position with Piedmont Primary Care, a small private practice in Oakland. The clinic served low-income and uninsured patients, the majority of whom were Spanish-speaking. At the clinic, petitioner worked an average of 30 hours per week. She elected not to work full-time to allow her time for self-care, working with her sponsor, and attending therapy.

26. Petitioner achieved her first year of sobriety on May 5, 2014. However, shortly thereafter, she relapsed after learning about the Board’s investigation. Around this same time, petitioner started dating her future husband, Brian Agolia. Petitioner was under “a lot of pressure and stress” due to the Board’s investigation. She was also unhappy with her job. Petitioner met Brian at a work conference. At the time, Brian was a licensed marriage family therapist who worked for the county mental health services division. Petitioner described Brian as her “bright light.” They started dating and talked about starting a family together. They married in September 2014.

27. In the summer of 2014, prior to being placed on probation, petitioner enrolled in and completed continuing medical education courses in medical record keeping and professional boundaries, as well as a prescribing course for opioids, pain management, and addiction. In the professional boundaries course, petitioner learned about the power differential between a physician and her patient. The course “opened [her] eyes” to the delicate role she holds as a physician and helped her understand that any personal relationship with a patient is inappropriate.

28. On July 23, 2014, petitioner attended an investigative interview with the Board. She submitted to a drug test and tested positive for marijuana, due to her recent relapse.

29. Petitioner was placed on probation in May 2015. Shortly thereafter, she successfully completed a course in medical ethics and professionalism. This course reinforced what petitioner had learned in the professional boundaries course, and reiterated that, as a physician, petitioner was in a position of great influence.

30. Petitioner last smoked marijuana in July 2014. While on probation, she checks in every morning to see if she has to submit to biological fluid testing. To date, petitioner has not received a positive result.

31. Beginning in 2015, as required by her probation, petitioner attended psychotherapy with Ahmad Samady, M.D., of Kaiser Permanente. Initially, petitioner saw Dr. Samady on a monthly basis; later, her sessions were reduced to every quarter. In his report to the Board dated September 27, 2016, Dr. Samady opined that petitioner had progressed to the point where ongoing therapy treatment was no longer necessary or appropriate. Dr. Samady further opined that petitioner could practice medicine without the need for additional therapy, and that any medication or medication management could be provided by petitioner's primary care physician. By letter dated February 6, 2017, the Board advised petitioner that the therapy requirement of her probation was deemed completed and that further therapy was not required.

32. To satisfy the practice monitor requirement, petitioner enrolled in the Physician Enhancement Program offered by the University of California, San Diego, PACE Program,<sup>3</sup> in June 2015. Deepak Asudani, M.D., was assigned to serve as petitioner's practice monitor. Dr. Asudani has submitted regular quarterly summary reports to the Board in which he reported that petitioner continuously performed focused and appropriate physical examinations, and demonstrated "satisfactory to superior" chart note documentations.

33. Since September 2016, petitioner has worked for Afato Medical Corporation (Afato) in Yuba City, providing primary care, urgent care, and family medicine. She works an average of 20 hours per week. Afato's owner, Fa'afouina Afato, M.D., is petitioner's supervising physician. Dr. Afato's medical license is currently on Board probation due to prior inappropriate prescription practices. A third doctor at the practice, TJ Maroon, M.D., was also on Board probation. However, Dr. Maroon completed his probation, effective March 28, 2019.

34. Petitioner acknowledged her past mistakes and took full responsibility for her behavior. She described the changes in her personal life since shortly before being placed on probation as "night and day." She believes that being on Board probation has positively changed her life. She has used, and continues to use, the lessons from her past to provide

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<sup>3</sup> PACE is an acronym for Physician Assessment and Clinical Education.



better care to her patients, and be a better person and mother. In a letter dated March 18, 2019, Dr. Samady noted that petitioner is stabilized on her current medications, and that she appears to be “in remission of any psychiatric symptoms.”

35. Petitioner is 38 years old. She and her husband have two children, ages two and four. Petitioner no longer attends AA on a regular basis. However, she continues to enjoy a strong family support network on which she relies on to avoid triggers and maintain her sobriety.

36. Petitioner and her husband wish to move to the State of Washington to settle down and raise their family. Petitioner still has connections with the community health center in Bellingham, where she trained, and which is in “dire need” of a Spanish-speaking primary care physician. Petitioner wishes to relocate and settle down prior to her 4-year old daughter starting kindergarten.

#### *Letters in Support*

37. Petitioner submitted two letters of recommendation, signed under penalty of perjury, by Chantal Lisette Morrison, D.O., and Vicky Valverde-Salas, M.D.

- a. Dr. Morrison has served as petitioner’s personal physician since 2011. She is aware of the matters which led to petitioner’s probation, and believes that petitioner has gained insight as to the cause of her behavior, accepts responsibility for her actions, and has overcome them. Dr. Morrison confirmed that petitioner is “totally abstinent” from marijuana, has received appropriate treatment for depression, and has “matured significantly.” Dr. Morrison further described petitioner as an “excellent physician who is thoughtful, generous and kind,” and noted that she would trust petitioner to provide medical care to her own family. Dr. Morrison urged the Board to terminate petitioner’s probation to benefit “[petitioner], her patients and the public at large.”
- b. Dr. Valverde-Salas is a board-certified family physician who has practiced in California for more than 30 years. She is the owner and medical director for Piedmont Primary Care, where petitioner worked from September 2013 through April 2017. Dr. Valverde-Salas described petitioner as providing “passionate medical care” who has made the center “a welcoming and trusted clinic that patients can rely upon for their medical needs.” Dr. Valverde-Salas is aware of the circumstances which placed petitioner’s license on probation. She averred that petitioner has “worked diligently” to overcome those issues and has never been impaired at work or acted inappropriately with a patient. Dr. Valverde-Salas supports the termination of

petitioner's probation, noting she is an "invaluable" physician who "presents no danger to the community."

38. Petitioner also submitted several letters of support from friends, colleagues and former patients. One letter is undated and the remaining letters were dated prior to the filing of the Accusation but after the underlying incidents had occurred. Only one letter, authored by Margaret Kray, Nurse Practitioner from Piedmont Primary Care, mentioned having knowledge of petitioner's misconduct which led to the Board's investigation. Generally, the letters' authors describe petitioner as an honest, trustworthy, and dependable physician who is compassionate about practicing medicine and helping others. In a letter dated May 1, 2014, petitioner's former AA sponsor asserted that petitioner "remains committed to her continued sobriety, recovery and living in the principles of the program of Alcoholics Anonymous."

*Testimony of Eva Berlfein*

39. Eva Berlfein is the office administrator for Afato Medical Corporation, and has known petitioner for several years. Ms. Berlfein testified at hearing in support of petitioner's Petition. She described petitioner as "very thoughtful" and a physician who deals with patients "at a personal level." Ms. Berlfein is aware of the circumstances which led to petitioner's probation. She has never observed petitioner to be impaired at work, or to have any professionalism issues with her patients. On the contrary, Ms. Berlfein noted that petitioner listens to and makes decisions together with her patients, and that she is "compassionate, concerned, and personable."

*Testimony of Alan Zeichner, D.P.M.*

40. Alan Zeichner, D.P.M., is petitioner's father and testified in support of petitioner's early termination of probation. Dr. Zeichner practiced as a podiatrist for more than 40 years at Kaiser Permanente as well as the Veteran's Affairs Hospital in Palo Alto. He also served as a case evaluator and expert witness for the California Board of Podiatry for several years. Dr. Zeichner retired from practice in 2013.

41. Dr. Zeichner described petitioner as a caring individual and a "very good student." Just before petitioner started college, Dr. Zeichner and his wife suspected petitioner suffered from depression. This caught them off-guard, as petitioner always did well in school and did not seem to suffer from personal issues. Petitioner's parents consulted with professionals and enrolled petitioner in counseling. When petitioner was accepted into the University of Wisconsin, Dr. Zeichner was "thrilled." However, only three weeks after settling in on campus, petitioner was "very unhappy" and returned home. Petitioner found a job doing home food delivery to AIDS patients.

42. Eventually, petitioner moved to Seattle and found work. After a period of time, she enrolled in Seattle City College followed by Seattle University. Encouraged by her school counselor and father, petitioner applied and was accepted into medical school. Again,

petitioner performed well academically and did not seem troubled by personal issues. At times, though, petitioner would get “very depressed” and her parents had to make “emergency” trips to Seattle to calm her down. Dr. Zeichner and his wife worried for petitioner. Petitioner sought treatment, but the providers minimized her complaints. Dr. Zeichner trusted “the experts” and assumed petitioner’s troubles were related to the stress and pressure of attending medical school. At the time, Dr. Zeichner was unaware of petitioner’s issues with marijuana.

43. Dr. Zeichner is aware of the facts leading to petitioner’s license being placed on probation. He averred that petitioner is a “totally different person” over the last few years. She is marijuana-free, married to a “wonderful” husband, and mother to two “wonderful” children. Dr. Zeichner communicates with petitioner “all the time,” by telephone, FaceTime,<sup>4</sup> or in person. Petitioner has a “handle” on her depression now, and is surrounded by a strong family support system. For all of these reasons, Dr. Zeichner believes petitioner can practice medicine safely without restrictions going forward.

#### *Discussion*

44. Based on all of the facts and circumstances set forth above, petitioner has demonstrated that she is capable of practicing medicine without restrictions and without posing a risk of harm to the public. She has complied with all terms of her probation and is generally well-regarded and respected by her colleagues and patients alike.

45. Petitioner has accepted responsibility for her conduct and learned from her past mistakes. She has maintained her sobriety for almost five years. Dr. Samady confirmed that petitioner’s depression is under control, that she is compliant with her treatment and medication plan, and that any psychiatric symptoms are in remission. Petitioner is also happily married and is a dedicated mother to her two young daughters. She also enjoys the strong support network of family and professional colleagues. Regarding her clinical skills, petitioner’s practice monitor reports that her examinations and documentation are consistently adequate and satisfactory. In all respects, her life today is completely different than what it was in 2012 and 2013. These factors establish that there is little risk for recidivism.

46. Petitioner has completed four years of her five-year probation, which will self-terminate in May 2020. When all the evidence is considered, petitioner demonstrated sufficient rehabilitation such that there is no risk to public safety by granting her petition for early termination of probation.

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<sup>4</sup> FaceTime is a tele-video application for Apple devices.

## LEGAL CONCLUSIONS

1. Under Business and Professions Code section 2307, a person whose license has been revoked, suspended or placed on probation may petition for reinstatement or modification of penalty, including modification or termination of probation. A petition for early termination of probation of three years or more may not be filed less than two years from the effective date of the Board's decision ordering the disciplinary action. (Bus. & Prof. Code, § 2307, subd. (b)(2).) Petitioner has satisfied this timing requirement as she filed her petition more than two years after her probation went into effect.

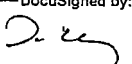
2. The petition must be accompanied by "at least two verified recommendations from physicians and surgeons licensed in any state who have personal knowledge of the activities of the petitioner since the disciplinary penalty was imposed." (Bus. & Prof. Code, § 2307, subd. (c).) In reviewing the petition, consideration may be given to "all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's activities during the time the certificate was in good standing, and the petitioner's rehabilitative efforts, general reputation for truth, and professional ability." (Bus. & Prof. Code, § 2307, subd. (e).)

3. Petitioner bears the burden of establishing her fitness for reinstatement or modification of penalty, including modification or termination of probation. (Evid. Code, § 500.) The factors described above have been considered. As set forth in the Factual Findings and Legal Conclusions as a whole, and particularly, as discussed in Factual Findings 44 through 46, petitioner has met her burden of establishing fitness for early termination of probation by clear and convincing evidence.

## ORDER

The Petition for Early Termination of Probation of Lindsay Rose Agolia, M.D., Physician's and Surgeon's Certificate Number A 113193, is GRANTED.

DATED: May 9, 2019

DocuSigned by:  
  
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TIFFANY L. KING  
Administrative Law Judge  
Office of Administrative Hearings